



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फ़ा.सं./F.No. GST/15-325/OA/2021

DIN-20231264WT000000EED0  
आदेश की तारीख/Date of Order: - 27.12.2023  
जारी करने की तारीख/Date of Issue :- 27.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor  
सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 55/JC/ LD /GST/2023-24**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GST/15-325/OA/2021 dated 08.08.2022 issued to M/s Lenovo India Pvt. Ltd., having GSTIN 24AABC13372H1ZS, Kerry Indev Logistics Pvt. Ltd., Survey No.213P, Village-Navapura, Taluka-Sanand, Ahmedabad, Gujarat-382210.



## BRIEF FACTS OF THE CASE

1. M/s Lenovo India Pvt. Ltd., Kerry Indev Logistics Pvt. Ltd., Survey no. 213P, Village- Navapura, Taluka- Sanand, Ahmedabad, Gujarat, 382210 (hereinafter referred to as "the noticee" for the sake of brevity) are a Pvt. Ltd. Company and registered under GST having GSTIN 24AABCI3372H1ZS. The noticee are engaged in the business of trading activities of the laptops and other computer parts etc. falling under chapter 84 and 85 of and also availing the benefits of Input Tax Credit of the GST paid on the inputs/goods or services and capital goods under the provisions of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017' for sake of brevity).
2. Whereas, a letter from preventive section of CGST Ahmedabad South dated 14.02.2022 and copy of HMs no. 28 and 95 issued by CERA for furnishing of records for verification of Credit claimed in Tran-1 along with other documents was been received from Division office on 15.02.2022. In the documents received from preventive section of CGST Ahmedabad South, it was stated that an information was received by the preventive section of CGST Ahmedabad South on 24.08.2017 for the verification of Tran-1 for Rs. 1,40,16,228/- filed by the noticee. In continuation of the verification, preventive section of CGST, Ahmedabad South had issued a summons dated 05.12.2019 for submission of relevant documents i.e. copy of Tran-1 along with supporting documents, copy of invoices, bills & ledgers of Transitional Credit availed as prescribed under section 140(3) of the CGST Act, 2017. In response to summons, the taxpayer had submitted the copies of BoE and Electronic Credit ledger.
3. The noticee had not furnished the records sought by the preventive section, CGST Ahmedabad South i.e. copy of Invoices, payment particulars of duty, stock register, sales/purchase ledger etc. Therefore, in absence of such documents, the conditions prescribed under section 140(3) of the CGST Act, 2017 were not fulfilled by the noticee for carrying forward of the eligible credit in Tran-1. Section 155 of the CGST Act, 2017 provides that the burden of proof for availing input tax credit shall lie on the claimant which reads as "*Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claims shall lie on such person.*"
4. Whereas, the transitional provisions under the CGST Act, 2017 allow carryover of only the CENVAT Credit and Credit of eligible duties as mentioned in the explanations given at the end of section 140 of the CGST Act, 2017. In the instant case, the taxpayer had failed to produce the requisite documents/records relying on which they had carried forward the credit of Rs. 1,40,16,228/-.
5. It was observed that the CERA Audit had issued Half Margin Memo. No. 28 and 95 dated 24.02.2021 & 26.07.2021 respectively for verification of Tran-1 as detailed below:-

- (a) H.M. No. 28 - Tran-1 not made available though the taxpayer availed transitional credit.
- (b) H.M. No. 95 - Table 7(a) of TRAN 1 pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of CENVAT Credit chain earlier or manufacturer of taxable as well as

exempted goods. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on invoice/document evidencing payment of duty and fulfillment of other Conditions Specified in section 140(3), 140(4)(b), 140(6) and 140(7) as the case may be.

As per section 140(3) of CGST Act, a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:-

- (i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) The said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) The supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

During test check of TRAN I records in the case of M/s Lenovo India Pvt. Ltd., it is noticed that the taxpayer has carried forward transitional credits accumulated in respect of Cenvat on stock of finished/semi finished goods amounting to Rs. 1,40,16,228/- in table 7a.

As per the TRAN statement, the taxpayer has claimed credit in table 7(a) of TRAN as under;

Cenvat on stock of Finished/semi finished goods is Rs. 1,40,16,228/-.

In respect of above TRAN credit availed by the taxpayer Audit has the following observations;

1. Though the claim is under Section 140(3), there is no documentary evidence to ascertain that the conditions as mentioned above have been complied with while availing the credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

In this regard records/stock details/ sample invoices/ statements containing the details of purchases and consumption of inputs held in

stock may be made available for verification please. Calculation sheet for arriving at the amount of 7a credit may also be made available.”

6. In view of the above said observations/ discrepancies noticed, the preventive section of CGST Ahmedabad South had issued summons vide F. No. IV/PI-1/227/Lenovo/2019-20 dated 05.12.2019 and Range Superintendent, AR-IV, Division-IV, Ahmedabad-South vide letter F. No. AR-IV/Div-CERA/Tran-1/HM 28/2020-21 dated 01.03.2021 had requested the noticee to submit the compliance. The noticee vide their reply dated 16.12.2019 has submitted partial documents i.e. BoE and ledgers pertaining to the credit. In spite of several communications of the department, the noticee had failed to provide/produce necessary documents/records to prove the authenticity/admissibility of the credit availed in Tran-1. Therefore, the same was required to be reversed/paid along with applicable interest thereon under the Section 73 of the CGST Act, 2017.

7. In view of the foregoing paras, the summary of wrongly availed Cenvat Credit in Tran-1 is as under:-

				Amount in Rs.
Sr. No.	Credit availed under Section	Colum No. of Trans-1	Total credit availed in Tran-1 under 140(3)	Wrongly availed credit
1	140(3)	7(a)	1,40,16,228/-	1,40,16,228/-

8. It appeared that M/s. Lenovo India Pvt. Ltd., had intentionally availed un-authorized and in-admissible credit amounting to Rs. 1,40,16,228 /- as transitional credit. It also appeared that the noticee had contravened the provisions of Section 140 and 142 of the CGST Act, 2017. Therefore, the wrongly availed/transited credit of Rs. 1,40,16,228 /- appeared to be recoverable from them under Section 73(1) of the CGST Act, 2017. Interest under Section 73(5) of the CGST Act, 2017, was required to be recovered on total amount of Rs. 1,40,16,228/- and it also appeared that the noticee had rendered themselves liable for penal action under Sections 122(1) and Sections 122(3) of the CGST Act, 2017.

9. As a part of Dispute Resolution initiative of the department, Form GST DRC-01 A dated 19.07.2022 was issued to the noticee informing the ascertained tax and was advised to deposit the amount along with applicable interest under Section 73(5) by 03.08.2022. In response to the GST DRC-01 A dated 19.07.2022, the noticee vide letter dated 27.07.2022 submitted their detailed reply and requested to grant personal hearing before the case is adjudicated.

10. Accordingly, Show Cause Notice F.No.GST/15-325/OA/2021 dated 08.08.2022 and having DIN 20220864WT0000510978 was issued to the noticee M/s Lenovo India Pvt. Ltd., Kerry Index Logistics Pvt. Ltd., Survey no. 213P, Village- Navapura, Taluka- Sanand, Ahmedabad, Gujarat, 382210 under Section 73 of the CGST Act. Vide the said Show Cause Notice, the noticee were called upon to show cause to the Joint Commissioner, CGST, Ahmedabad North Commissionerate, as to why:-

- (i) Input Tax Credit of **Rs. 1,40,16,228/- (Rupees One Crore Forty Lakh Sixteen Thousand Two Hundred Twenty Eight Only)** as determined in the Show Cause Notice should not be demanded and recovered under Proviso to Section 73 (1) of the Act;
- (ii) Interest at the appropriate rate on the amount mentioned at Sr. No. (i) above should not be charged and recovered from them under Section 73(5) of the Act;
- (iii) Penalty on the amount mentioned at Sr. No. (i) above should not be charged and recovered under the provisions of Section 122(2) of CGST Act, 2017;

### **DEFENCE REPLY**

10. The noticee submitted their reply to the SCN vide their submission dated 16.11.2022 received on 29.11.2022.

11. They state that they fulfilled all the conditions of Section 140 read with Rule 117 for the purpose of taking credit of eligible duties under erstwhile law to the electronic credit ledger. They stated that the CGST Act, 2017 does not specify as to how the 'burden' has to be discharged, however, there was no lapse on the part of the noticee as the credit had been availed by fulfilling conditions required for availing transitional credit. They also stated that the only objection in the notice was that they had not provided required documents, which is not correct. They submitted that they had provided details/documents called for on multiple occasions and on directions of two different authorities.

12. They submitted that for the purpose of verification of transitional credit, duty paying documents and details of stock held are required.

13. They further submitted that intent of legislature is to grant benefit of Cenvat and input tax credit under existing laws for adjustment against tax payable on outward supplies under GST law. They also relied upon the judgement of Hon'ble High Court of Madras in the case of Commissioner of GST and Central Excise and others Vs Bharat Electronics Limited, Chennai [2021-TIOL-220-HC-MAD-GST] and Flyer on transitional provisions dated 01.01.2018 issued by CBIC.

14. The noticee also referred to provisions of Rule 117(4)(a)(ii) of the CGST Rules, 2017, which provides that where no tax paid document is available in respect of goods attracting 18%, credit upto 60% can be allowed. They also referred to DO letter F.No.267/8/2018—CX.8 dated 14.03.2018 issued by CBIC.

15. They also submitted that they were ready to co-operate with the department and undertook to depute authorized persons to work with the authorities to verify documents. They also referred to the judgement of Hon'ble High Court of madras in the case of Vikas Elastochem Agencies Private Limited vs Deputy Commissioner of Central Tax & GST, 2021 (12) LCX 0141.

16. They requested to drop the Show Cause Notice dated 08.08.2022 issued to them.

17. The authorized representative of the noticee, vide letters 05.12.2023 submitted their reply to SCN, wherein they submitted two box files containing copies of Bills of Entry along with list of TRAN-1 credit of Rs.1,40,16,228/-.

### **PERSONAL HEARING**

18. In the instant case, multiple opportunities of Personal Hearing were given to the noticee vide letters dated 20.07.2023, 01.11.2023, 29.11.2023 and 15.12.2023, however, neither the noticee nor their authorized representative appeared before me to present their case. Accordingly, I proceed to decide the matter on the basis of material available on record and on merits.

### **DISCUSSION AND FINDINGS**

19. In the instant case, I have carefully gone through the Show Cause Notice issued to the noticee, reply to SCN submitted by the noticee and other submissions made by the noticee. On recapitulating, I find that the issue involved in the present show cause notice is related to admissibility of Input Tax Credit of Rs.1,40,16,228/- taken by the noticee in TRAN-1 filed by them.

20. On perusal of the above referred case records, I find that the issue is came out when the CERA Audit Party issued a Half margin Memo No. 28 and 95 for furnishing records for verification of Credit claimed in TRAN-1. The following observations were made by CERA in the above Half Margin Memos:-

- (i) TRAN-1 was not made available though the noticee had availed transitional credit.
- (ii) The noticee had availed Cenvat on stock of finished/semi finished goods amounting to Rs.1,40,16,228/- in Table 7(a) of TRAN-1. Though the claim was under Section 140(3), there was no documentary evidence to ascertain the whether conditions given in Section 140(3) have been complied with while availing credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

21. Preventive section of CGST Ahmedabad South had also issued summons dated 05.12.2019 to the said taxpayer. Also, Range Superintendent, AR-IV, Division-IV, Ahmedabad South, vide letter F.No.AR-IV/Div-CERA/Tran-1/HM 28/2020-21 dated 01.03.2021 had requested the noticee to submit compliance. However, the noticee vide their reply 16.12.2019 submitted partial documents pertaining to credit. Accordingly, despite several communications, the noticee failed to provide/produce necessary documents/records to prove the authenticity/admissibility of the credit availed in TRAN-1. The noticee in their reply have claimed that they had submitted the required details, however, they did not provide any documentary evidence in this regard. Accordingly, the instant Show Cause Notice was issued to them to recover the said credit of Rs. .1,40,16,228/-. In this connection, I have gone through the reply filed by the noticee wherein they claimed that they are indeed eligible and have rightfully taken Cenvat credit of Rs.1,40,16,228/-in TRAN 01.

22. Vide letter dated 05.12.2023, the authorized representative of the noticee submitted two box files containing copies of Bills of Entry along with list of TRAN-1 credit of Rs.1,40,16,228/-. Now with regard to the demand of Rs. 1,40,16,228/-, I find that the noticee has taken transitional credit of Rs.1,40,16,228/- under sub-section (3) of Section 140 in Tran-1 return. Sub-section (3) of Section 140 provides mechanism for taking credit in TRAN-1 in the cases where registered person was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services or who was providing work contract services and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20th June,2012 or the first stage dealer or a second stage dealer or a registered importer or a depot of manufacturer. The said sub-section is reproduced below for ease of reference:-

*“(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing work contract services and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20th June,2012 or the first stage dealer or a second stage dealer or a registered importer or a depot of manufacturer, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished [ goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions namely :-*

*(i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;*

*(ii) the said registered person is eligible for input tax credit on such inputs under this Act;*

*(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;*

*(iv) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and*

*(v) The supplier of the services is not eligible for any abatement under this Act:*

*Provided that where a registered person other than manufacturer or supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty under the existing law in respect of such inputs, then, such registered person shall, subject to such conditions, limitations and safeguard as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.”*



23. It is also pertinent to discuss the provisions of Section 16 of the CGST Act, 2017, which contains conditions for taking input tax credit. The said section is reproduced below for ease of reference:-

*"SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

*(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —*

*(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

*f(aa) the details of the invoice or debit note referred to in ) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;1*

*(b) he has received the goods or services or both.*

*[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —*

*(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

*(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]*

*(c) subject to the provisions of [section 41 or section 43A3, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*

*(d) he has furnished the return under section 39 :*

*Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :*

*Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :*

*Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

*(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.*

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [\* \* \*] debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

*[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]”*

24. From the perusal of the above provisions of law, it is evident that as per provisions of Section 140(3)(iii) a registered person is entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished on the appointed day, subject to possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs. Further, as per provisions of Section 16 (2)(a) a registered person is entitled to take credit of input tax subject to conditions that he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

24. In the instant case, I observe that the noticee had availed Input Tax Credit of Rs.1,40,16,228 through TRAN-1 into their Electronic

Credit Ledger. The entire credit was taken on basis of Bills of Entry (BoE). It appeared that the noticee did not submit the relevant documents initially when called for, to verify admissibility of transitional credit claimed by them. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by them.

25. As far as the correctness/admissibility of Cenvat credit is concerned, I find that the jurisdictional Officer is the competent authority to examine/ verify the correctness / admissibility of documents submitted for taking credit. I further find that if the taxpayer have provided all the documents for verification, The jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However, the taxpayer submitted two box files containing Bills of Entry along with a list for TRAN-1 credit of Rs.1,40,16,228/- along with their reply to SCN dated 05.12.2023.

25. In order to ascertain admissibility of credit mentioned in Tran-1 submitted by the noticee and in SCN, the documents submitted by the taxpayer were sent for verification to the Jurisdictional Deputy Commissioner, Central Excise Div- IV, Ahmedabad North, vide letter F.No.GST/15-325/OA/2022 dated 05.12.2023. Accordingly, I find that the admissibility of the credit was verified by the Jurisdictional Range Officer and verification report thereof was forwarded by the Assistant Commissioner, CGST and Central Excise, Div.-IV, Ahmedabad North, vide letter F.No. V/27-63/MISC/CORRP/2021-22 dated 22.12.2023. Summary of the verification report is as follows:-

Sr. No.	Remarks by Jurisdiction Range Officer	Amount of Transitional Credit	Whether admissible or not
1	BOE date is 13.12.2019 i.e. after enactment of GST Act, 2017. IGST is paid.	9,359.00	No
2	BOE document not found in Box files provided.	6,72,742.16	No
3	CVD amount as mentioned in COLUMN no. 08 is matching with BOE. BOE is also found reflecting on icegate website.	86,38,559.07	Yes
4	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 13,81,087/-. BOE is found reflecting on icegate website.	4,474.72	No
5	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 19,49,878/-. BOE is found reflecting on icegate website.	2,807.82	No
6	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 2,04,745/-. BOE is found reflecting on icegate website.	1,87,956.03	No
7	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 2,24,143/-. BOE is found reflecting on icegate website.	4,961.06	No
8	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 2,97,325/-. BOE is found reflecting on icegate website.	2,105.65	No
9	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 20,00,850/-. BOE is found reflecting on icegate website.	26,678.00	No

10	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 35,74,821/-. BOE is found reflecting on icegate website.	38,60,806.95	No
11	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 4,71,217/-. BOE is found reflecting on icegate website.	1,272.29	No
12	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 4,77,738/-. BOE is found reflecting on icegate website.	1,10,562.37	No
13	CVD amount as mentioned in Column no. 08 is not matching with BOE, actual amount of CVD as per BOE is 4,87,419/-. BOE is found reflecting on icegate website.	3,684.89	No
14	CVD amount as mentioned in COLUMN no. 08 is not matching with BOE, actual amount of CVD as per BOE is 7,71,712/-. BOE is found reflecting on icegate website.	833.45	No
15	CVD amount claimed in Column no. 08 is not matching with BOE, actual amount of CVD as per BOE is 2,43,709/-. BOE is found reflecting on icegate website.	526.41	No
16	Duty/Tax payment is shown nil on Icegate website.	4,29,519.92	No
17	HSN not matching	715.00	No
18	No details of such entries found in BOE.	897.62	No
19	Quantity as mentioned in Column no. 05 is not matching with BOE, as per BOE actual quantity is 224. BOE is also found reflecting on icegate website.	20,246.62	No
<b>Total</b>		<b>1,39,78,709</b>	

26. As per the verification report submitted by the Assistant Commissioner, Division-IV, Ahmedabad North, it is observed that the noticee had submitted Bills of Entry where the transitional credit involved was Rs. 1,39,78,709/- and did not submit documents in respect of remaining transitional credit of Rs.37,519/-. Out of ITC of 1,39,78,709/-, ITC amounting to Rs. 8,638,559/- is admissible and ITC amounting to Rs. 53,40,150/- is not admissible in view of the remarks made by Jurisdictional Range Officer. Further, ITC of Rs.37,519/- is not admissible as the noticee failed to produce any document in support of claim of ITC pertaining to this amount. Accordingly, ITC amounting to Rs. 86,38,559/- is admissible and ITC amounting to Rs.53,77,669/- (Rs.53,40,150/- + Rs.37,519/-) is not admissible. I also find that I find that the noticee have failed to prove that they are eligible to avail the ITC of Rs. 53,77,669/- which is not admissible as per the above report as per Section 155 of the CGST Act, 2017. The said section is reproduced below for ready reference:-

*"155. Burden of proof.—Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."*

27. As the noticee failed to discharge burden to prove admissibility of ITC amounting to Rs. 53,77,669/-, the claim of the noticee for this ITC is not acceptable and, therefore, I hold that the noticee is not eligible to carry forward transitional credit of Rs. 53,77,669/- where they could not provide tax paying documents or prove eligibility of the said credit. Accordingly, transitional credit of Rs. 53,77,669/- is not admissible to the noticee.

28. In view of the above, on relying upon the verification report dated 22.12.2023 submitted by the Assistant Commissioner, Division IV Ahmedabad North, the noticee's submission dated 16.11.2023 received on 29.11.2023 and documents submitted vide letter dated 05.12.2023, I conclude that noticee have correctly availed ITC amounting to Rs. 86,38,559/- and the same is admissible to them and ITC amounting to Rs.53,77,669/- has been wrongly availed by them and is not admissible in view of the foregoing discussion.

29. Now, I would like to discuss the applicability of interest. I find that the noticee have not reversed/paid the Input Tax Credit of Rs. 53,77,669/- wrongly carried forward in their Electronic Credit Ledger through TRAN-1. I also observe that the noticee have nowhere claimed that they have not utilized the ITC availed through TRAN-1, nor have they produced any document to this effect before me. It is incumbent upon me to mention it here that once the wrongly availed credit has been utilised for discharging the output liability, the same needs to be recovered or reversed along with applicable interest. I find that the case before me, no reversal of wrongly availed Input Tax Credit has been done and no interest on such Input Tax Credit has been paid by the noticee. The provisions of Section 50(3) of the CGST Act, 2017, prescribe interest on Input Tax Credit wrongly availed and utilised. For ease of reference the relevant provisions is reproduced as under:-

*Section 50. Interest on delayed payment of tax.-*

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:*

*[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]*

*(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

*[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed].*

30. In view of above, it is evident that interest liability would squarely arise on wrong availment of Input Tax Credit and subsequent to utilization of the same. I find that the noticee have failed to reverse/pay such wrongly availed ITC and did not pay applicable interest on such wrong availment and utilization of ITC.

31. Further, I find that a new Rule 88B of Central Goods and Service Tax Rules, 2017, regarding manner of calculating interest on delayed payment of tax has been inserted retrospectively w.e.f. 01.07.2017 vide CBIC Notification No. 14/2022-Central Tax, dated 05.07.2022 for easy of reference the same is reproduced as under:-

*"Rule 88B. Manner of calculating interest on delayed payment of tax.-*

*(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.*

*(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.*

*(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.*

*Explanation.-For the purposes of this sub-rule, -*

*(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*

*(2) the date of utilisation of such input tax credit shall be taken to be, -*

*(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or*

*(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.”*

32. As per the provisions of the sub-rule (3) of Rule 88B of the CGST Rules, 2017, it is evident that the utilisation of wrongly availed ITC would attract interest provisions if balance of such wrongly availed ITC has been reduced in guise of discharging of output tax liability. I find that the wrong availment of ITC is through TRAN-1 has been established beyond doubt as per discussions in foregoing paras and as regards utilisation of the said ITC, the noticee have neither made any written submission nor produced any documentary evidence before me to explain the situation of non-utilisation of wrongly availed ITC. Accordingly, the liability of interest would arise on such wrongly availed ITC. In this regard, I rely upon the judgement of Hon'ble Jharkhand High Court in case of M/s. Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that:-

*“Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act.”*

33. In view of the above, I am hold that Interest, on wrongly availed and utilised ITC through TRAN-1, is correctly applicable as per provisions of Section 50(3) of the CGST Act, 2017 read with sub rule (3) of Rule 88B of the CGST Rule, 2017, as amended.

34. Now, Coming to next limb regarding imposition of penalty under the provisions of Section 73(1) read with Section 122(2) of the CGST Act, 2017. I

find from facts of case elaborated in the notice that the demand of wrong availed and utilised ITC has been proposed by invoking the provisions of Section 73 of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 122(2) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 122(2) of CGST Act, 2017 first, the same is reproduced as under:-

*“Section 122 (2):- Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. “*

35. On plain reading of the above provisions, it is evident that clause (a) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 73(9) of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or ten percent of tax due, whichever is higher, is liable on a registered taxable person who supplies any goods or service or both; or where the input tax credit has been wrongly availed or utilised for reason other than fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case, the wrong availment of ITC through TRAN-1 has been soundly established in the instant case. Further, the utilisation of such wrongly availed ITC and consequent to liable for interest has also been justified as per discussions in foregoing paras. I find that the noticee have availed transitional Credit in contravention of provisions of Section 140 of the CGST Act, 2017 and have wrongly utilized the same. Accordingly, they have made themselves liable for penalty under the provisions of Section 122(2)(a) of the CGST Act, 2017.

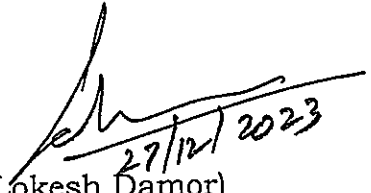
36. In view of the above discussion and findings, I pass the order as under:-

- i. I confirm the demand of Input Tax Credit of Rs. 53,77,669/- (Rupees Fifty Three Lakh Seventy Seven Thousand Six Hundred Sixty Nine only) and order to recover the same under the provisions of Section 73 (9) of the Central Goods and Service Tax Act, 2017;



- ii. I order the recover applicable interest on (i) by holding the liability of interest on confirmed demand under Section 50(3) of the Central Goods and Services Tax Act, 2017;
- iii. I impose penalty of Rs. 5,37,767/- (Rupees Five Lakh Thirty Seven Thousand Seven Hundred Sixty Seven only) upon the noticee under Section 73(9) read with Section 122(2)(a) of the Central Goods and Services Tax Act, 2017 for the wrongly availing, carrying forward and utilization of inadmissible Cenvat Credit as transitional credit in TRAN-1;
- iv. I drop the demand of Input Tax Credit of Rs. 86,38,559/-(Rupees Eighty Six Lakh Thirty Eight Thousand Five Hundred Fifty Nine only)

26. Accordingly, the Show Cause Notice bearing F.No.GST/15-325/OA/2021 dated 08.08.2022 (having DIN 20220864WT0000510978) is disposed off in above terms.

  
(Lokesh Damor)

Joint Commissioner,  
Central Excise & CGST,  
Ahmedabad North.  
Date:27.12.2023

BY SPEED POST/ BY HAND  
F.No. GST/15-325/OA/2021

To,  
M/s Lenovo India Pvt. Ltd., (GSTIN 24AABCI3372H1ZS)  
Kerry Indev Logistics Pvt. Ltd., Survey no. 213P,  
Village- Navapura, Taluka- Sanand,  
Ahmedabad, Gujarat, 382210

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-IV, Ahmedabad North.
3. The Superintendent, Range-I, Division-IV, CGST & Central Excise, Ahmedabad North, **with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.**
4. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

